

MOTION TO INSTRUCT CONFEREES ON H.R. 5, SCHOOL IMPROVEMENT ACT OF 1987

The SPEAKER. For what purpose does the gentleman from California seek recognition?

Mr. DANNEMEYER. Mr. Speaker, I have a motion at the desk to instruct conferees.

The SPEAKER. For what purpose does the gentleman from Illinois [Mr. MADIGAN] rise?

PARLIAMENTARY INQUIRIES

Mr. MADIGAN. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. MADIGAN. Mr. Speaker, it was my understanding that before any consideration would be given to a motion to instruct conferees that the Speaker was going to conclude the 1-minute speeches.

The SPEAKER. The Chair would like to accommodate Members seeking to be heard on the 1-minute rule but under the rule a motion such as would be proposed, as the Chair understands it, to instruct conferees would take precedence if a Member sought to press that matter at this time and under the rule would be more privileged.

Mr. DANNEMEYER. Mr. Speaker, that is my request.

Mr. MADIGAN. Further pursuing my parliamentary inquiry, Mr. Speaker, does the Chair then as a matter of custom in the House recognize people on the basis of seniority with regard to committee assignments on matters such as this?

The SPEAKER. The gentleman is correct. If two or more Members seek recognition for motions of equal privilege, it would be the custom of the Chair to recognize the Member most senior on the committee of jurisdiction.

Mr. MADIGAN. Mr. Speaker, the Speaker has just described my situation. I am the senior member and pursuant to a previous order of the House I have a motion at the desk.

Mr. DANNEMEYER. I have a further parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. DANNEMEYER. Since the Speaker previously recognized his Member and this Member responded that I have a motion at the desk to instruct conferees and I choose to go forward with it at this time pursuant to a unanimous-consent request of last week, does that not give this Member since I was recognized for that purpose priority to proceed at this time?

The SPEAKER. Well, the gentleman is correct, the gentleman did seek recognition for the purpose of making a motion and then the gentleman from Illinois rose with a parliamentary inquiry and the Chair recognized the gentleman from Illinois for that purpose. And it is the Chair's under-

standing that each of the two gentlemen standing desires to offer a motion to instruct conferees. Is that correct?

Mr. DANNEMEYER. That is correct, Mr. Speaker.

Mr. MADIGAN. That is correct, Mr. Speaker.

The SPEAKER. Well, the Chair, under those circumstances, following the general precedents of the House would recognize the more senior minority member of the two minority members on the committee of jurisdiction.

Mr. DANNEMEYER. Mr. Speaker, I have a further parliamentary inquiry. I appreciate that the Speaker is hesitating a little with respect to his tentative decision, but this Member actually was recognized before my colleague from Illinois was recognized and I would think on that basis that this Member should have priority for making this motion.

The SPEAKER. The gentleman's motion had not been placed before the House. The gentleman had sought recognition and the Chair had said, "For what purpose does the gentleman seek recognition?" The gentleman from California had said, "For the purpose of offering a motion to instruct conferees."

Mr. DANNEMEYER. That is correct, Mr. Speaker.

The SPEAKER. And the Chair was about to ask the Clerk to report the motion when the gentleman from Illinois stood and sought recognition. The Chair said to the gentleman from Illinois, "For what purpose does the gentleman rise?"

Mr. DANNEMEYER. If I may further be heard on my inquiry, if I understand the gentleman from Illinois correctly, he achieved recognition on the basis of a parliamentary inquiry.

The SPEAKER. The gentleman is correct.

MOTION OFFERED BY MR. MADIGAN

Mr. MADIGAN. Mr. Speaker, pursuant to a previous order of the House, I offer a motion.

The SPEAKER. The Clerk will report the motion.

The Clerk read as follows:

Mr. MADIGAN moves that the managers on the part of the House appointed for consideration of section 7003 of the Senate amendment to H.R. 5 be instructed to agree to language that offers a solution to the dial-a-porn problem.

PARLIAMENTARY INQUIRIES

Mr. DANNEMEYER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. DANNEMEYER. Mr. Speaker, when a motion to instruct conferees is pending, as is the situation with the gentleman from California having made such a motion, is it in order for the House to then consider another motion to instruct conferees?

The SPEAKER. Is the gentleman asking would it be in order for him to offer an amendment to the motion?

Mr. DINGELL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The Chair is advised that the gentleman from California could offer an amendment to the motion of the gentleman from Illinois but only if the previous question were voted down. If the previous question on the motion of the gentleman from Illinois should be ordered, then his motion would have to be voted upon without intervening motion.

□ 1430

Mr. DANNEMEYER. Mr. Speaker, if I might be heard further on my parliamentary inquiry, I do not quite see how we could get to the point where we could consider the motion offered by the gentleman from Illinois to instruct conferees when, at the time the gentleman from Illinois is making his motion, there is already a motion by this gentleman from California to instruct conferees pending at the desk. And I have not withdrawn that motion.

The SPEAKER. The motion of the gentleman from California had not been stated and was not pending before the House. The gentleman had sought recognition for the purpose of offering a motion to instruct conferees. The gentleman from Illinois asked on a parliamentary inquiry, in a situation involving two minority Members, each seeking recognition for the purpose of offering a motion to instruct conferees, as to which of the two Members under the precedents would be recognized. The Chair replied that the senior of the two on the Committee of Jurisdiction, under the precedents, would be recognized, and the gentleman from Illinois offered a motion, he being the senior of those seeking recognition for the purpose of offering a motion.

Mr. DANNEMEYER. Mr. Speaker, I wonder if I could ask the indulgence of the House for the purpose of having the record read back for the purpose of determining whether this gentleman from California was recognized for the purpose of making a motion to instruct conferees.

Mr. DINGELL. I would have an objection, Mr. Speaker. I would have to observe that I think that is a unanimous-consent request, and it is taking a great amount of the time of the House at a time when we have other business pending. I would have to object.

The SPEAKER. The Chair has recognized the gentleman from Illinois, and the gentleman's motion has been read and is now pending before the House. The gentleman is entitled to 1 hour on the motion.

Mr. DANNEMEYER. I have a further parliamentary inquiry, Mr. Speaker.

What happened to my motion?

Mr. MADIGAN. It was never read.

Mr. DANNEMEYER. Yes, it was.

Mr. SOLOMON. Mr. Speaker, he was recognized for the purpose of offering an amendment, and the record will show that.

The SPEAKER. The Chair will state again the situation.

The gentleman from California sought recognition. The Chair asked the purpose of his seeking recognition, and he said he sought recognition for the purpose of offering a motion to instruct conferees. The motion was not made prior to the rising of the gentleman from Illinois to ask by unanimous consent if it were proper to entertain such a motion before the completion of the 1-minute unanimous consent requests. The Chair replied that the Chair would prefer to accommodate Members seeking to be heard under the 1-minute rule first and then entertain the motion, but that the motion really does have priority under the rules to a unanimous-consent request to be heard for 1 minute, and that if the gentleman insists upon offering the motion at that time, the Chair would entertain the motion.

Then the gentleman from Illinois asked if two Members, each desiring to offer such a motion, were simultaneously to seek recognition, which of two Members should be recognized under the precedents of the House, and the Chair replied: The senior of the two on the Committee of Jurisdiction.

Mr. DANNEMEYER. At that point, Mr. Speaker, on the basis of the Chair's own analysis, with all due respect, when I stood for recognition, there was not someone else asking for recognition. It was not done simultaneously.

Mr. DINGELL. Mr. Speaker, may I call for the regular order?

The SPEAKER. The Chair is trying to preserve the regular order and thinks that the Members are entitled to understand exactly what is going on and are entitled to ask questions and to be accommodated to the extent of the Chair's ability to accommodate them.

The fact is that two Members sought recognition for the same kind of motion, for a motion to instruct conferees. The motions having equal precedence and priority, the question arose as to which of the two Members should be recognized for the purpose of making a motion. The Chair replied that the precedents hold that the senior of the two or more Members seeking recognition is entitled to be recognized. The gentleman from Illinois asked then to be recognized for the purpose of offering that motion. The Chair recognized the gentleman from Illinois. The motion has been read. The motion offered by the gentleman from Illinois to instruct conferees on H.R. 5 is the pending order of business.

The gentleman from Illinois [Mr. MADIGAN] is recognized for 1 hour.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MADIGAN asked and was given permission to revise and extend his remarks.)

Mr. MADIGAN. Mr. Speaker, at the outset I would like to explain to the Members of the House that the gentleman from California [Mr. DANNEMEYER] and this gentleman from Illinois, along with the gentleman from Virginia [Mr. BLILEY] and the gentleman from Michigan [Mr. DINGELL], who are here on the floor, are all members of the same committee and all interested in the same issue. We are members of the Energy and Commerce Committee, and we are interested in the dial-a-porn problem, this business of young people being able to pick up a telephone, dial a number, hear a pornographic recording, and sometimes do that on a long-distance basis, with their parents ultimately being responsible for that long-distance charge. All of us are interested in dealing with that problem.

In the other body an amendment was adopted to section 7003 of the bill, H.R. 5, and that amendment dealt with the dial-a-porn problem in a manner which many of us considered to be of constitutional legitimacy. We are concerned that because of the constitutional questions associated with the Senate language, the conferees might choose to drop that language rather than proceed with something that, on the face of it, clearly seems to be unconstitutional.

So I am offering here a motion to instruct conferees to simply agree to language that offers a solution to the dial-a-porn problem. I offer this language as a senior member on my side of the aisle of the Energy and Commerce Committee, and on behalf of myself and on behalf of the gentleman from Virginia [Mr. BLILEY], another member of the committee to whom I wish to yield at this point.

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Speaker, I thank the gentleman from Illinois for yielding.

Mr. Speaker, let me say to my colleagues, and in particular to my friend, the gentleman from California, and my other colleagues on the Energy and Commerce Committee, that the motion that he had wished to make addresses an amendment put on by the other body that is identical to a bill of which I am the chief cosponsor in the House.

Now, Members may wonder why I would be here speaking in favor of this motion. The reason is this, Mr. Speaker: I have been trying, along with others, including members of this committee, a majority of whom are cosponsors of my bill, to deal with this problem for 5 years. In the meantime, children have been making these calls continually, and if we were in conference to agree to the language of the other body and if the bill comes back and is approved by this body and the

other body and goes to the President and becomes law, we would still not be closer to a solution of the problem, because immediately the purveyors of these messages would go into court and get a restraining order, and then it would be litigated for not days or months but years before we got a solution, and maybe we would get the one we sought and maybe we would not.

I have continued to work on this problem, and I must say we have made a lot of progress. I think that we will, under the language of the gentleman's motion to instruct in the conference, be able to work out whereby we will solve the problem through technical means without getting into any first amendment considerations. I think that is what we would all like to see happen, and I think we would cut the ground out from under the people who would go into court. They may go into court on other grounds, but they would not be able to use the first amendment.

Mr. Speaker, that is what it is all about, and that is why we need this language.

Mr. BURTON of Indiana. Mr. Speaker, will the gentleman yield so I may ask a question of the gentleman in the well?

Mr. MADIGAN. I yield to the gentleman from Indiana for the purpose of debate only.

Mr. BURTON of Indiana. Mr. Speaker, I thank the gentleman for yielding.

The question I have is that regardless of whether the motion of the gentleman from California were to prevail or the motion to instruct offered by the gentleman from Illinois, it seems to me that these purveyors of smut are going to take the final result to court anyhow, so the stronger language, it seems to me, would be the right course of action, because we want to stop this stuff from getting to our children.

Mr. BLILEY. Mr. Speaker, will the gentleman yield further?

Mr. MADIGAN. I yield to the gentleman from Virginia.

Mr. BLILEY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the difference is that they may well go to court, but if we are successful in working out the language, as I think we will, they will not be able to go to court on first amendment grounds. They would have to go to court on some other grounds, and thereby we believe and the lawyers who have advised me believe that they would not have a strong case. That is the reason for this motion, I say to the gentleman from Indiana.

Mr. MARKEY. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I would ask that the gentleman from Virginia stay in the

well, please, for just a moment, just so we can get a little background on what this issue is and how we got to this point. As the gentleman from Virginia has pointed out, for the last 5 years he has worked passionately in the Subcommittee on Telecommunications and Finance to find some resolution on this issue.

The problem has been that almost every formulation which deals with this issue from an obscenity perspective or indecency standpoint has been challenged and challenged successfully in the courts of this country.

The gentleman from Virginia and I met in September of last year in my office, and I agreed to work with the gentleman from Virginia to construct a regulatory and technological solution to his problem which would be able to overcome the first amendment objections and at the same time still create difficult barriers for any child to gain access to this dial-a-porn service without the permission of their parent by giving to the parent an access code or setting up some other technological barrier so that the child would have to get from the parent if they were going to dial it; otherwise the service would not be available to the home.

We have been working hard over the last 5 months to construct a compromise solution. We at this point have an understanding in principle among the ACLU and the Citizens for Decency, along with the gentleman from Virginia, the gentleman from Michigan, and myself, to try to resolve the first amendment issues while at the same time creating this technological bar of children gaining access without their parents' permission, thereby circumventing the first amendment problem while at the same time dealing with people's primary concern, which is children's access to this service without the parent's consent.

The gentleman has thoughtfully illuminated a dilemma. We have a real world solution which we are considering in the context of the conference committee, and the type of instruction which we are potentially presented with by the gentleman from California is one that again raises the specter of first amendment problems that again brings us right down the same road that has given us all these difficulties over the last 5 years.

This is an issue that we want to deal with on a bipartisan basis. There is uniform concern in the House over this issue, and I believe the motion offered by the gentleman from Illinois is one that is reflective of our general sense that we want to get a bipartisan resolution of the issue.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to my colleague, the gentleman from California, for the purpose of debate only.

Mr. DANNEMEYER. Mr. Speaker, I thank my colleague for yielding.

Mr. Speaker, I think it would be helpful for the Members of the House to understand what this squabble is all about and where we are. The issue involved in this squabble is whether or not we in the House today are going to vote on the issue of banning dial-a-porn in America. That is the issue. I happen to believe that the people of this country are outraged at what has developed in the telephone industry.

They are making millions of dollars out of this trash. There are powerful forces at work in this country that can keep open the window for the continued availability of dial-a-porn. I am not suggesting that my colleague, the gentleman from Illinois [Mr. MADIGAN], or the chairman of the committee, the gentleman from Michigan [Mr. DINGELL] are in that group. They are not. These two gentlemen, along with my good friend, the gentleman from Virginia [Mr. BLILEY], have been working diligently to provide a vehicle for following constitutional muster but narrowly restricting the availability of dial-a-porn so as to preclude its availability to kids.

□ 1445

That is what they are struggling to do and I commend them for it. They have been struggling to reach this compromise for over a year. I hope they will continue with that struggle, because like anything else around this place, issues are not resolved today. They come up tomorrow, but this issue today will permit those of us who believe that dial-a-porn does not belong in the culture of America to say so with our votes.

This place is supposed to be built on accountability. The Senate has already voted 98 to nothing to implement what I seek to do here today in my motion to instruct. If I were successful in offering my motion to instruct, the effect of it would be that the authorization for dial-a-porn would be stricken from the Federal law which we adopted in 1983. That is the reason it is on the books today. It would just say it will be no more, whether it is for adults or kids, and I think that is the proper course.

The compromise that my good friends are seeking to adopt would, if I understand it, permit a telephone subscriber as a condition precedent to notify the telephone company that they want to get dial-a-porn. Now, what does that do?

Mr. MADIGAN. Mr. Speaker, will the gentleman yield?

Mr. DANNEMEYER. I am happy to yield to my friend, the gentleman from Illinois.

Mr. MADIGAN. There is no language like that here. What I am offering is a motion that says: "Mr. MADIGAN moves that the managers on the part of the House appointed for consideration of section 7003 of the Senate amendment to H.R. 5 be instructed to agree to language that

offers a solution to the dial-a-porn problem."

If I might continue, the reason I am doing that and the only reason that I am doing that is because the language adopted in the Senate, which the gentleman from California would like to adopt here in the House in a motion to instruct conferees, has been called into question by many of the lawyers here in the House and in the Senate and other constitutional authorities, saying that language simply goes beyond anything that would be found to be constitutional in a court challenge.

So we are hoping to have the opportunity to resolve this issue in the conference between the two bodies in a way that would not be found to be unconstitutional, and that is what the language of my motion does, and it does not say anything about access buttons or access codes or anything like that.

Mr. DANNEMEYER. I agree. The motion does not relate to that language, but the compromise agreement that was discussed here on the floor before this squabble developed contained an element whereby a telephone subscriber would be able to tell the telephone company that they wanted a continuation of subscriber services of this nature, the affirmative action of the subscriber, and that is the defect in it, because how would the occupant of the home, the parents, know what their kids are doing?

Mr. MADIGAN. Mr. Speaker, if the gentleman will yield again, and the gentleman knows we have plenty of time. I have yielded to the gentleman and if I am interrupting his train of thought, I apologize; but the language the gentleman would offer includes such references as "indecent language."

Now, I do not know how—that is going to be a very subjective judgment and I do not think that 218 Members of the House could agree on what is indecent language, and the court has already indicated in past sessions that they are unable to agree on something like that; so I think the gentleman begs a court reversal of what he attempts to do, unless the gentleman gives us some opportunity to work this thing out in a way that would be found to be constitutional.

Mr. DANNEMEYER. May I respond?

Mr. MADIGAN. I yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Speaker, let me respond to that.

The existing language of the law says that any obscene or indecent communication—that is the disjunctive—and admittedly the word "indecent" has different meanings in our court system, but the word "obscene" has a definite understanding in constitutional law. It has been proscribed. It is not constitutionally protected and the amendment that I am offering would

have the effect of continuing the utilization of the word "obscene" in the statutory law of the country that would effectively prohibit dial-a-porn.

Mr. Speaker, do I have the time? Could I yield to the gentleman?

Mr. MADIGAN. No, I have the time, and I have other Members who have previously asked for recognition. I have yielded to the gentleman from California and would appreciate if he would continue and conclude his thoughts.

Mr. DANNEMEYER. I just have a comment that I would like to make here.

This incident occurred on July 26, 1987. It came from a parent talking about what happened in its family.

"Dial-A-Porn" has deeply affected my family and friends. My 13-year-old son, Kevin called the 900 number. Kevin's friend Don, 15, was over and they were listening to the prerecorded messages. Later when I arrived home from work I immediately made them hang up. Unknown to me, Kevin's 14-year-old brother was listening on another line with his two friends. They continued to listen passing it back and forth. Their sister Jacqueline, 10 was also listening on her extension.

Within 48 hours Don and his 11-year-old brother molested my daughter Jacqueline. The Clio Vienna Township Police were notified and in their investigation revealed the fact that Jacqueline had encouraged them by asking them to touch her and "Do it with her"—phrases she heard on the "Dial-a-porn". Later the same day I learned that Kevin had sexual intercourse with a girl. His response when asked why was "it sounded like fun." I asked him, "What sounded like fun?" and he said "You know the phone call, the \$74 phone call."

This phone call has damaged our lives. It has caused strain and distrust in our family. We have had conflict with our neighbors when we had to inform them of their children's involvement. Most of all the permanent damage it's done to our daughter. Somehow the proper steps must be taken to eliminate this diseased pornography that is so readily available to children. Please help our children to prevent such occurrence again.

My point is that even with the compromise that has been talked about on the floor, not a part of the gentleman's motion to instruct conferees, it would still make dial-a-porn available to kids in those homes who had opted to provide, or as a subscriber asked for the availability of dial-a-porn. I do not think as a policy that is the direction Congress should be taking. I think we should be voting here today to eliminate dial-a-porn from the culture of America.

I intend to ask for a roll call vote on the previous question. For those Members who choose to vote yes on the previous question, that means they are voting for the continued availability of dial-a-porn in America. If you vote no on that previous question, that means you will be given a chance to vote on the motion that I would like to make, and but for the intervention of my distinguished senior member on the committee, the gentleman from Illinois [Mr. MADIGAN], I would have been able

to make and would say that there will be no more dial-a-porn in America.

I ask for the ability of the House to make that motion so that we can express ourselves on this sensitive issue in the culture of America today.

I thank the gentleman for yielding me the time.

Mr. MADIGAN. Mr. Speaker, just very briefly reclaiming my time, in response to the gentleman from California who just spoke, a vote on the previous question will not be the vote that the gentleman describes at all. The vote on the previous question will be a vote on the previous question on my motion to instruct the conferees from the two bodies to agree to language that offers a solution to the dial-a-porn problem.

It is not a motion to postpone this until some future time. It is a motion to instruct the conferees to find a solution to it in this conference and to come back from that conference to this body and the other body with that solution.

Mr. Speaker, I yield to the gentleman from Michigan [Mr. DINGELL], the chairman of the Energy and Commerce Committee.

Mr. DINGELL. Mr. Speaker, I want to thank the distinguished gentleman from Illinois for yielding to me. I want to commend him for his leadership in this matter.

As the chairman of the House conferees, I will accept his instruction.

I want to commend the gentleman from Illinois [Mr. MADIGAN] for his long effort on this matter and for the leadership he is showing today.

Dial-a-porn is one of the most obnoxious and contemptible forms of constitutional abuse which we find today. It is a perversion of free speech. It is the sale of some of the vilest and ugliest kinds of human behavior and human emotions for money. I want to commend the gentleman for his instructions, because I believe that this obnoxious practice should be limited to the fullest extent permitted by the Constitution.

Now, I gather that there is some difference over the precise form of the motion to instruct. I want to observe that the gentleman from Illinois has come forward with an excellent instruction to the conferees. I want to tell my colleagues that his instruction will be accepted by the conferees and that we will go as far as we can while remaining faithful to the Constitution in bringing this obnoxious practice to a halt. We will see to it that our young people are protected from this ugly and improper practice to the fullest extent possible within the limits of the Constitution.

The gentleman from Illinois is providing leadership and he is supporting the leadership of the distinguished gentleman from Virginia [Mr. BLILEY] who has long been interested both as a decent Christian and a fine human being, in preventing this kind of prac-

tice on publicly licensed and regulated facilities.

I believe the fact that the gentleman from Illinois [Mr. MADIGAN] has made it possible today for the House to express its thoughts on this issue of great importance and will assure us that we have the support of the House when we go to conference with the Senate on this question.

We should not quibble about the precise instructions to the conferees. It is plain that the conferees are going to go to the Senate and try on behalf of the House to achieve the best possible resolution of this issue. This resolution, which will remain within the framework of the Constitution, should assure that the necessary statutory steps are taken to bring this obnoxious practice to a halt.

I think that we should vote yes on the previous question. We should not quibble. In addition, we should not allow a situation where the question of constitutional inhibitions should be used to prevent the strongest possible interdiction by Federal statute against this practice of dial-a-porn.

The gentleman from Illinois [Mr. MADIGAN] has provided us with valuable leadership. I urge my colleagues to vote yes on the previous question and on the instruction. I urge them to recognize that the gentleman from Illinois, the gentleman from Virginia [Mr. BLILEY], and the gentleman from California [Mr. DANNEMEYER] will be working with other Members of the House who can bring this practice to a halt and move forward on this business which is of great importance to every American.

Mr. MADIGAN. Mr. Speaker, I yield to another member of the Energy and Commerce Committee, the gentleman from Illinois [Mr. COATS] who has been working on this problem for some time.

Mr. COATS. Mr. Speaker, I thank the gentleman from Illinois for yielding.

I regret, Mr. Speaker, that we are here today arguing with each other in this fashion, because I do not believe there is a Member of Congress on this floor who supports what is going on with dial-a-porn. We had hearings before our Energy and Commerce Committee in which many of us sat and listened to the presentations that were made about the problem of dial-a-porn, about the impact it is having on our society, and the evil impact it is having on our young people. As we sat through these hearings, we struggled with how to best deal with this problem. We have constitutional problems. We have court problems.

No one has been more vociferous or more tenacious on this issue, than the gentleman from Virginia [Mr. BLILEY].

I regret that we find ourselves in a position today that because the gentleman from Virginia [Mr. BLILEY] has come up with a solution which he believes will stand court muster. Howev-

er, this is not accepted by some other members of our committee. They say that a vote for the Madigan motion in a sense is a vote for dial-a-porn and that a vote against is a vote against dial-a-porn. I do not think that is the case. That is not what the gentleman from Illinois has in mind. It is certainly not what the gentleman from Virginia has in mind. He has worked diligently for more than 1 year on this issue, trying to bring about a compromise that will stand court muster, that will eliminate dial-a-porn, eliminate access to dial-a-porn for our young people and deal effectively with this problem that we have all been struggling with for so long.

□ 1500

The marketing of this dial-a-porn program is obnoxious, it is not discriminatory, and it is not directed just to adults. Members of my staff have received solicitations through the mail, attached to their windshield wipers, distributed on their doorsteps which have said, "If you want to make love with Susie, call this number," et cetera. I will not go into all of the graphic detail as I did in committee. This is the kind of thing that falls in the hands of our young people. It is very tempting to our young people. A simple phone call brings them this kind of indecency, and none of us wants to support that.

But what we are struggling with here, and what the gentleman from Virginia is attempting to do, is to come up with a solution that will not throw the issue into the courts. They have not been successful in dealing with this issue for year after year after year and leave us in limbo on this situation.

I wish the phone companies would have had the courage, would have the guts to come forward and say we are not going to offer this kind of service and we will go forward and stand the court test, and we will fight this. I think they would have been on the side of the people. They would have been on the side of decency, and I regret that in some cases perhaps profit motive has directed them into not taking the stand they should have.

However, despite what their lawyers tell us, there are constitutional problems, court problems, and legal problems. Legal scholars have come before the committee and told us there are constitutional problems and that if we go ahead with the solution the gentleman from California [Mr. DANNEMEYER] proposes, we will simply end up in the courts. We will not stop dial-a-porn, we will not impose a solution to the problem of having dial-a-porn impact on our young people, and we will be fighting this battle on legal grounds for months and years to come.

The gentleman from Virginia [Mr. BILLEY] has come forward with what he thinks is a technological solution to the problem. I say let us give it a shot.

These Members appointed as conferees have pledged to us here today that

they are going to vigorously pursue this effort and that this is not a compromise. This is a different solution. We are not compromising on this issue. No Member is standing here compromising on the issue. We are trying to find a compromise on the solution. One that will bring about a resolution of the problem.

I hope that is what we can accomplish. If we cannot, I will be the first one to come back here and support the gentleman from California [Mr. DANNEMEYER] whose position I support 100 percent. Everything he said about dial-a-porn, I agree with. I will be the first one back here to say, "BILL, the other one did not work; let us go your way, take our chance with the court and try to put it in place."

I thank the gentleman from Illinois for his efforts in this regard and I particularly thank the gentleman from Virginia for his efforts and I regret that he is being cast in a light of compromising on an issue he feels so deeply and strongly about.

Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. MADIGAN. Mr. Speaker, I thank the gentleman from Indiana for his contribution, and for purposes of debate only I yield such time as he may consume to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, we are dealing with a filthy filthy business here, and it seems to me that there is nothing that we can do in this body that would be too tough in terms of ending this filthy filthy business. And the fact is for all of the constitutional arguments that we have heard on the floor here in the last few minutes, the other body has in fact acted 98 to nothing on precisely the language the gentleman from California would have us approve. It seems to me if there were serious constitutional problems that maybe somebody over there would have found some of those serious constitutional problems before they voted 98 to nothing for this particular proposition.

What the gentleman from California is trying to do is make certain that the elimination the folks in the other body thought was important in fact gets acted on by the conference. So that is the real question, it seems to me, that is posed before us.

Do we take the weak approach, not that the people who are acting here are acting in bad faith, but the approach that they are asking us to take is a weaker approach than what the gentleman from California wants us to take, because what we would have before us in the motion offered by the gentleman from Illinois is a proposition that the conference committee ought to discuss a solution.

What the gentleman from California is saying is let us eliminate the problem. I think that we ought to vote with the gentleman from California.

Vote no on the previous question so that the gentleman from California can offer his amendment that will say to the conferees eliminate the problem, get rid of this filthy filthy business, and then the courts will do what the courts are going to do. But I would suggest that this constitutional argument that all of a sudden has been thrown into the middle of this debate is in fact something that was not given very serious consideration in the other body and that our position ought to be let us at least be as tough as they were on the other side of the Capitol. Let us just get tough here, and let us eliminate this filthy business.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I am glad to yield to the gentleman from New York, my colleague.

Mr. SOLOMON. Mr. Speaker, I would just like to point out the point the gentleman is making, and with all due respect to my good friend, the gentleman from Illinois [Mr. MADIGAN] who I know is sincere on this issue, and especially to the gentleman from Michigan [Mr. DRINGELL] chairman of the committee whom I have defended on attacks by the New York Times time and again, I have deep respect for him, but let me just say if there is sincerity on the part of all of the people who are supporting this, let us withdraw the Madigan motion and let the gentleman from California [Mr. DANNEMEYER] offer his motion. Then there is no question the conferees will accept this because the Senate has passed it 98 to nothing. This House will instruct the conferees to support it and then we will ban dial-a-porn.

If there is a question in any of my colleagues' minds as to whether this is constitutional, and I have heard no constitutional lawyers, including my good friend, the gentleman from Illinois, HENRY HYDE, raising any objections on this side of the aisle because I think it is constitutional, if there is a question then let us put our money where our mouth is. Let us pass the Dannemeyer motion to instruct. Then let us pass the gentleman's amendment, his motion to instruct in the form of legislation. Let us put them both on the desk of the President, and let us have them both signed into law. Then we will ban dial-a-porn forever.

If it is found unconstitutional, here is the backup piece of legislation.

I recall to my colleagues what happened to the Solomon amendment 5 years ago when similar arguments were made when I tried to offer amendments on this floor to ban Federal aid from going to draft dodgers, to young men and women who refused to register for the draft. Many people, including PAUL SIMON, who is running for President of the United States, said that is unconstitutional, and for months and months they blocked my amendment, until we finally passed it. It went to the President. He signed it,

and it went to the Supreme Court, was tried, brought by an action by the University of Minnesota. The Supreme Court upheld the so-called unconstitutional Solomon amendment by a vote of 7 to 2. So much for unconstitutionality.

That solves both your problems. Let us support the gentleman from Michigan [Mr. DINGELL], let us support the gentleman from Illinois [Mr. MADIGAN], and let us support the gentleman from California [Mr. DANNEMEYER]. Let us pass both of these and test them in the courts.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Michigan, chairman of the subcommittee.

Mr. DINGELL. Mr. Speaker, I think the gentleman from Illinois [Mr. MADIGAN] has shown extraordinary statesmanship and patience in connection with this debate. It appears that we are in the midst of a monstrous quibble. It has been said there is some legislative language that can be voted on. However, as we have not yet gone to conference there is no specific language to consider at the moment. We will be going to conference soon and I have already made a pledge concerning the goals of the conferees. I am sure the conferees, including myself, the distinguished gentleman from Massachusetts [Mr. MARKEY], the chairman of the subcommittee, as well as the other conferees, the three Democrats and two Republicans, will be given ample opportunity to participate. We are going to work together and write strong language to deal with this problem.

I think rather than getting ourselves in an enormous dialectical hassle over how many angels can dance on the head of the pin, or who is most opposed to dial-a-porn, we should simply support the previous question, as well as the motion to instruct the conferees offered by the gentleman from Illinois [Mr. MADIGAN]. We should recognize that this is a motion offered in good faith. We should also recognize the comments made by those of us who will be participating in the discussions with the Senate, and recognize that we are going to find the strong and most effective way to bring to fruition the long efforts of the gentleman from Virginia [Mr. BLILEY] and others who have been seeking to bring this obnoxious practice to a halt. I assure my colleagues we will make our best effort toward that end, and I thank my dear friend from Illinois for yielding.

Mr. MARKEY. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I am happy to yield to the gentleman from Massachusetts, chairman of the subcommittee.

Mr. MARKEY. Mr. Speaker, I thank the gentleman from Illinois for yielding.

Mr. Speaker, I want to make one thing very clear here, and that is that all of the conferees have every inten-

tion of being tough in terms of resolving this issue, but at the same time we intend on being smart. We want to resolve the issue in a way which effectively solves the problem at hand. We do not want to pass legislation which brings us years of litigation, and on an issue in which we know that just 3 weeks ago the second circuit court recognized the constitutional problem and decided that Congress may not ban indecent telephone language and in which we know from testimony before our own subcommittee just 4 months ago by the U.S. attorney from Utah, the chief prosecutor of these cases who testified before our subcommittee that the Helms language is, in his opinion, on its face, unconstitutional, that it will just buy us years of trouble, years of litigation, and ultimately have us engaging in further futile activity.

The gentleman from Virginia [Mr. BLILEY] is the single most sincere Member of Congress in terms of his desire to see a resolution of this issue. He is telling us that the message that is delivered by the gentleman from Illinois [Mr. MADIGAN] in his instructions to the conferees will give us the latitude to produce for the House a resolution of this issue.

I promise the gentleman from California that all of us, the gentleman from Michigan, the gentleman from Massachusetts, all of us have an interest in resolving this issue now. And if we can stand together, I give my colleagues my promise, and the chairman of the committee, the gentleman from Michigan, I know shares my view that we will do everything in our power to resolve this issue as part of this conference and to give my colleagues something that will stand constitutional questions and challenge.

The motion offered by the gentleman from Illinois should be supported. A yes vote is the correct vote if Members of this body seek to find a constitutionally passable piece of legislation which will deal once and for all with this question of pornography being in fact made available to minors without the permission of their parents. We think that we are very close to resolving that issue, and if the motion offered by the gentleman from Illinois [Mr. MADIGAN] is accepted, I think we have a very good chance of delivering that to the House.

Mr. MADIGAN. Mr. Speaker, in summary I would like to say that I have offered this motion on behalf of the gentleman from Virginia [Mr. BLILEY] and the gentleman from Indiana [Mr. COATS] who are both members of the appropriate subcommittee of the Committee on Energy and Commerce which has been involved in this dial-a-pornography over the telephone business for some number of years, now almost 5 years, I believe. Those two gentlemen have had the opportunity over a period of 5 years in that subcommittee to hear a lot of testimony from various constitutional schol-

ars, prosecutors and others as to what kind of language would be found to be constitutional by the Highest Court in this land, and what kind of language would not be. Clearly these two gentlemen, the gentleman from Virginia [Mr. BLILEY] and the gentleman from Indiana [Mr. COATS] are saying that the language the gentleman from California [Mr. DANNEMEYER] would like to offer is language that has been said to be by all the expert witnesses that have come before their subcommittee language that would be found to be unconstitutional. Even the U.S. Department of Justice has raised questions about the constitutionality of the language that would be offered here if my motion to instruct conferees were not to be successful.

The motion that I have offered to instruct conferees says the conferees are instructed to agree to language that offers a solution to the dial-a-porn problem. The conferees would include the gentleman from Virginia [Mr. BLILEY] who has been active in this issue for over 5 years, who is a parent, who is a devout member of his church and whose conservative credentials have never been questioned by any Member of this assembly on either side of the aisle.

This language requires that the dial-a-porn issue be resolved now and not be put over to some future time and place. The language provides the flexibility that is needed to resolve legal and constitutional issues. It is language that I hope the Members of this House will support.

Mr. Speaker, I move the previous question on my motion to instruct.

The SPEAKER. The question is on ordering the previous question.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. DANNEMEYER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 200, nays 179, not voting 54, as follows:

[Roll No. 8]

YEAS—200

Ackerman	Bosco	Collins
Akaka	Boucher	Conte
Alexander	Boxer	Conyers
Anderson	Brennan	Coyne
Andrews	Brooks	Crockett
Annuazio	Brown (CA)	de la Garza
Anthony	Bruce	DeFazio
Aspin	Bustamante	Dellums
Atkins	Campbell	Dicks
AuCoin	Cardin	Dingell
Baker	Carper	Dixon
Bates	Carr	Donnelly
Bellenson	Chandler	Downey
Berman	Clarke	Durbin
Bliley	Clement	Dwyer
Boland	Clinger	Early
Bonior	Coats	Eckart
Bonker	Coelho	Edwards (CA)
Boraki	Coleman (TX)	Evans

Fascell
Felghan
Fish
Flake
Florio
Foglietta
Foley
Frank
Gallo
Garcia
Gaydos
Geldenson
Gonzalez
Gordon
Gradison
Grant
Green
Guarini
Hall (OH)
Hamilton
Hatcher
Hawkins
Hayes (IL)
Hertel
Howard
Hoyer
Jacobs
Jeffords
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Leach (IA)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lowry (WA)

Luken, Thomas
MacKay
Madigan
Manton
Markey
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McDade
McHugh
McMillen (MD)
Miller (CA)
Mineta
Moakley
Moody
Morrison (CT)
Morrison (WA)
Mrasek
Murphy
Murtha
Nagle
Natcher
Neal
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Oxley
Panetta
Pease
Pelosi
Pepper
Perkins
Pickett
Pickle
Price (IL)
Rahall
Ray
Rhodes
Richardson

Rinaldo
Rodino
Roe
Rogers
Rostenkowski
Roybal
Sabo
Savage
Sawyer
Saxton
Schneider
Schroeder
Schumer
Sharp
Shays
Shuster
Sikorski
Siskiy
Skaggs
Slattery
Slaughter (VA)
Smith (FL)
Solara
St Germain
Staggers
Stokes
Studds
Swift
Synar
Torricelli
Townsend
Traficant
Traxler
Udall
Vento
Visclosky
Walgren
Waxman
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates

(NH)
Smith, Robert
(OR)
Snowe
Solomon
Spence
Spratt
Stallings
Stangeland
Stenholm
Stratton
Stump

Sundquist
Swindall
Tallion
Tauke
Tausin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Upton
Valentine
Vander Jagt

Volkmer
Vucanovich
Walker
Watkins
Weber
Weldon
Whittaker
Wolf
Wyllie
Yatron
Young (FL)

Darden
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon

Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan

Pickle
Porter
Price (IL)
Price (NC)
Quillen
Rahall
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer

NOT VOTING—54

Applegate
Archer
Barton
Blaggi
Blirakis
Boehlert
Boggs
Boulter
Clay
Courter
Crane
Daub
Dickinson
Dowdy
Dreier
Dymally
Fazio
Fields

Ford (MI)
Ford (TN)
Frost
Gephardt
Gray (IL)
Gray (PA)
Hansen
Horton
Johnson (CT)
Kemp
Kennedy
Kolbe
Lantos
Leath (TX)
Leland
Lent
Lewis (FL)
Lightfoot

Lott
Lungren
Mack
Mica
Mollohan
Parrish
Pursell
Rangel
Roemer
Salki
Scheuer
Schlitz
Shumway
Smith (IA)
Stark
Sweeney
Wortley
Young (AK)

Evans
Fascell
Fawell
Felghan
Fish
Flake
Filippo
Florio
Foglietta
Foley
Ford (MI)
Frank
Frenzel
Gallely
Gallo
Garcia
Gaydos
Geldenson
Gekas
Gibbons
Gillman
Gingrich
Glickman
Gonzales
Goodling
Gordon
Gradison
Grandy
Grant
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiller
Hochbrueckner
Holloway
Hopkins
Houghton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jenkins
Johnson (SD)
Kasich
Konnyu
Kyl
Lagomarsino
Lancaster
Latta
Lewis (CA)
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan

Luken, Thomas
Lukens, Donald
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McMillen (NC)
McMillen (MD)
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Mollinari
Mollohan
Montgomery
Moorehead
Morella
Myers
Nelson
Nichols
Nielsen
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Oxley
Panetta
Pashayan
Patterson
Petri
Porter
Price (NC)
Quillen
Ravenel
Regula
Ridge
Ritter
Roberts
Robinson
Rose
Roth
Roukema
Rowland (CT)
Rowland (GA)
Russo
Schaefer
Schuette
Sensenbrenner
Shaw
Skeen
Skellton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny
(OR)
Smith, Robert
(NH)
Smith, Robert
(OR)
Snowe
Solara
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Synar
Tallion
Tauke
Tausin
Taylor
Thomas (CA)
Torres
Torricelli
Townsend
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins

□1530

Messrs. COMBEST, JOHNSON of South Dakota, ROBERT F. SMITH, BARNARD, ROSE, BEVILL, RITTER, PORTER, THOMAS of Georgia, TAUKE, HOCHBRUECKNER, HUGHES, DERRICK, STRATTON, GLICKMAN, and RIDGE changed their votes from "yea" to "nay."

Mr. CARR and Mr. TRAFICANT changed their votes from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. PANETTA). The question is on the motion to instruct offered by the gentleman from Illinois [Mr. MADIGAN].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MADIGAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 382, nays 0, not voting 51, as follows:

[Roll No. 9]

YEAS—382

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Bates
Bellenson
Bennett
Bentley
Bereuter

Berman
Bevill
Bliray
Billey
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Burton
Bustamante
Byron
Callahan

Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clement
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coughlin
Coyne
Craig
Crockett
Dannemeyer

Darden
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Duncan
Durbin
Dwyer
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Felghan
Fish
Flake
Filippo
Florio
Foglietta
Foley
Ford (MI)
Frank
Frenzel
Gallely
Gallo
Garcia
Gaydos
Geldenson
Gekas
Gibbons
Gillman
Gingrich
Glickman
Gonzales
Goodling
Gordon
Gradison
Grandy
Grant
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiller
Hochbrueckner
Holloway
Hopkins
Houghton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)

Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McMillen (NC)
McMillen (MD)
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Mollinari
Mollohan
Montgomery
Moorehead
Morella
Myers
Nelson
Nichols
Nielsen
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Oxley
Panetta
Pashayan
Patterson
Petri
Porter
Price (NC)
Quillen
Ravenel
Regula
Ridge
Ritter
Roberts
Robinson
Rose
Roth
Roukema
Rowland (CT)
Rowland (GA)
Russo
Schaefer
Schuette
Sensenbrenner
Shaw
Skeen
Skellton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny
(OR)
Smith, Robert
(NH)
Smith, Robert
(OR)
Snowe
Solara
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Synar
Tallion
Tauke
Tausin
Taylor
Thomas (CA)
Torres
Torricelli
Townsend
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins

NAYS—179

Armey
Badham
Ballenger
Barnard
Bartlett
Bateman
Bennett
Bentley
Bereuter
Bevill
Bliray
Broomfield
Brown (CO)
Bryant
Buechner
Bunning
Burton
Byron
Callahan
Chapman
Chappell
Cheney
Coble
Coleman (MO)
Combest
Coughlin
Craig
Dannemeyer
Darden
Davis (IL)
Davis (MI)
DeLay
Derrick
DeWine
DioGuardi
Dorgan (ND)
Dornan (CA)
Duncan
Dyson
Edwards (OK)
Emerson
English
Erdreich
Espy
Fawell
Filippo
Frenzel
Gallely

Gekas
Gibbons
Gillman
Gingrich
Glickman
Goodling
Grandy
Gregg
Gunderson
Hall (TX)
Hammerschmidt
Harris
Hastert
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hiller
Hochbrueckner
Holloway
Hopkins
Houghton
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jenkins
Johnson (SD)
Kasich
Konnyu
Kyl
Lagomarsino
Lancaster
Latta
Lewis (CA)
Livingston
Lloyd
Lowery (CA)
Lujan
Lukens, Donald
Marlenee
Martin (NY)
McCollum
McCurdy

McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Mollinari
Montgomery
Moorehead
Morella
Myers
Nelson
Nichols
Nielsen
Owens (UT)
Packard
Pashayan
Patterson
Penny
Petri
Porter
Price (NC)
Quillen
Ravenel
Regula
Ridge
Ritter
Roberts
Robinson
Rose
Roth
Roukema
Rowland (CT)
Rowland (GA)
Russo
Schaefer
Schuette
Sensenbrenner
Shaw
Skeen
Skellton
Slattery
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny
(OR)
Smith, Robert

Waxman	Whitten	Wyllie
Weber	Williams	Yates
Weiss	Wise	Yatron
Weldon	Wolf	Young (FL)
Wheat	Wolpe	
Whittaker	Wyden	

NOT VOTING—51

Barton	Ford (TN)	Lungren
Biaggi	Frost	Mack
Blirakis	Gephardt	Mica
Boehlert	Gray (IL)	Parris
Boggs	Gray (PA)	Purcell
Boulter	Hansen	Rangel
Chapman	Horton	Roemer
Clay	Johnson (CT)	Saiki
Coble	Kemp	Scheuer
Courter	Kennedy	Schulze
Crane	Kolbe	Shumway
Daub	Lantos	Smith (IA)
Dowdy	Leland	Stark
Dreier	Lent	Sweeney
Dymally	Lewis (FL)	Wilson
Fazio	Lightfoot	Wortley
Fields	Lott	Young (AK)

□ 1545

Ms. PELOSI changed her vote from "nay" to "yea."

So the motion to instruct was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3378

Mr. THOMAS of Georgia. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor from the bill (H.R. 3378) to require National Park Service to reintroduce wolves into Yellowstone National Park.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

CLAIMS AGAINST THE UNITED STATES FOR NEGLIGENT MEDICAL CARE PROVIDED MEMBERS OF THE ARMED FORCES

Mr. HALL of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 375 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 375

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1054) to amend chapter 171 of title 28, United States Code, to allow members of the Armed Forces to sue the United States for damages for certain injuries caused by improper medical care, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill as an original bill for the purpose of

amendment under the five-minute rule and each section shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the committee shall rise and report the bill to the House with such amendments, as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. HALL] is recognized for 1 hour.

Mr. HALL of Ohio. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Ohio [Mr. LATTI], for purposes of debate only, pending which I yield myself such time as I may consume.

(Mr. HALL of Ohio asked and was given permission to revise and extend his remarks.)

Mr. HALL of Ohio. Mr. Speaker, House Resolution 375 is an open rule providing for the consideration of H.R. 1054, the bill to allow members of the Armed Forces to sue the United States for damages for certain injuries caused by improper medical care.

The rule provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The rule also makes in order the Judiciary Committee amendment in the nature of a substitute now printed in the bill as the original text for the purpose of amendment under the 5-minute rule. Each section of the substitute shall be considered as having been read.

Finally, the rule provides for one motion to recommit, with or without instructions.

Mr. Speaker, H.R. 1054 would amend the Federal Tort Claims Act to allow active duty military personnel to sue for damages that arise from medical malpractice. It is a narrowly-drawn measure which does not permit medical malpractice suits resulting from medical treatment furnished overseas or during combat situations.

Although active-duty military personnel represent only about one-third of those served at military medical facilities, they currently are the only category of patients at such facilities who cannot sue for medical malpractice. In fact, even Federal prisoners can sue for medical malpractice in Government-operated facilities. This legislation would correct these inequities under present law.

Mr. Speaker, I am not aware of any objections to this open rule. I would urge my colleagues to adopt this rule so that we can move on to the consideration of this legislation.

Mr. LATTI. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LATTI asked and was given permission to revise and extend his remarks.)

[Mr. LATTI addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. Speaker, I yield 5 minutes to the gentleman from Illinois [Mr. PORTER]. (Mr. PORTER asked and was given permission to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, this is an acceptable bill from my point of view in one respect—it allows members of the Armed Forces the right to recover in court damages incurred by malpractice.

There is nothing wrong with this, of course, except that it does not really address other aspects of the malpractice crisis gripping this country, and does not go far enough to limit the Federal Governments potential monetary exposure.

The bill does attempt to limit so-called "noneconomic" damages by defining the word personal injury to preclude mental or emotional disability that is not a direct result of the injury.

The problem with this—and the lawyers here in this body all know it—is that it is not very tough to convince a judge that an emotional damage of one kind or another—so called "pain and suffering" or "noneconomic damages"—is a direct result of some physical injury.

So my concern, then, is that the bill really doesn't preclude the danger of the Federal treasury being tapped for large pain and suffering awards as a result of military medical malpractice.

Is this a genuine concern? I think that it is.

In 1985, I commissioned a comprehensive GAO study of closed malpractice claims for the year 1984. That study revealed a number of important things.

One thing the study turned up is something which I call a "money spike."

Of all claims, only about 40 percent result in a payment of any kind.

But of those claims that pay, 60 percent of the total money paid out goes to only 9 percent of the claimants—and all of that is in amounts exceeding \$250,000.

In other words, about 4 or 5 claims out of 100 pay big money; the rest either don't pay much or don't pay at all.

Turning to the analysis of payments solely for noneconomic damages—for pain and suffering—we see the same money spike dynamic.

In this case, 60 percent of the money paid out for pain and suffering went to only 2 percent of all claimants—all in amounts exceeding \$200,000.

The point of my bringing this up is to alert the members to the reality that we risk opening the door through this legislation to huge payouts by the government for pain and suffering.

Let's remember, too, that the judge will be deciding the case and fixing awards with the knowledge that Uncle Sam's deep pockets will be footing the bill.

My fear then, quite simply, is that the payouts will be large, the money spike, if you will, will be huge. When a sympathetic judge discovers it will be the Federal Government paying—the sky will be the only limit. The Federal Government will finance numerous multimillion dollar settlements and the costs of this bill will far exceed the \$25 million that CBO has ball-parked it at. It will be an unimpeded tap into the Federal Treasury for plaintiff's attorneys, and if we thought some judgments were large when the insurance company's were paying them, wait until we see those against Uncle Sam.

I considered offering an amendment to this bill to cap noneconomic payouts at \$300,000. I understand my able colleague from Illinois [Mr. DAVIS] will offer such an amendment, and I certainly will support it.

Malpractice is a complex issue. As I said at the outset, I have no problem with allowing active duty members to sue, but that is only part of the solution. Preventing occurrences is also vital.

We need comprehensive risk management in our military—computerized tracking of outcomes, extensive peer review, rigorous credentialing. We probably need better compensation for these doctors. And we need patient education on risks and exposures.

And again, we the government, the taxpayers in this case, we the payors of judgments—ought to protect ourselves against large Federal expenses by imposing some kind of limits on pain and suffering damages beyond those contemplated in this legislation.

Mr. LATTA. Mr. Speaker, I yield 5 minutes to the gentleman from Alabama [Mr. DICKINSON].

(Mr. DICKINSON asked and was given permission to revise and extend his remarks.)

Mr. DICKINSON. Mr. Speaker, I am going to vote against the rule because I am against the bill. I think it is a bad bill. I think that the gentleman from Illinois [Mr. PORTER] has pointed out most of the things in the way of inequities and fallacies involved in the bill. What we are doing is great for trial lawyers, and it is great for the ACLU, and it is great for people who want to sue the Government, as if we did not have enough of that already.

We have a good system now, we have a system of compensation for those who have been injured who have not been adequately taken care of, but there is no reason to impose this additional burden on the military at a time when the Department of Defense and the defense dollar is under attack. This would open sort of a Pandora's box so that everybody who wants to sue the Government can file suit. We have already seen how litigation has

mushroomed in the civilian sector. We have seen doctor after doctor go out of business. We have seen obstetricians quit their practice because of malpractice suits.

Mr. Speaker, at least those physicians in the military had some protection. As a matter of fact it helped in recruitment of physicians for the military because they did not have to spend \$75,000 up to \$200,000 a year for premiums for liability insurance. Now they want to take away that indemnity, this protection for our military doctors.

As the gentleman from Illinois [Mr. PORTER] has pointed out, this is just saying OK everybody, anybody that has a claim real or imagined has a free chance. Uncle Sam has the deep pocket here and it is going to hurt military medicine, it is going to hurt the Department of Defense, and I just think it is a bad bill.

Mr. Speaker, for that reason I would vote against the rule and vote against the bill.

Mr. HALL of Ohio. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, there are several misstatements of fact that I want to address.

First, there are no jury trials involved here. This is under the Federal Tort Claims Act and there will be no jury trials. There has been a suggestion that there would be a problem with jury trials, and that simply is not the case.

Mr. Speaker, there are a lot of controversial aspects to the tort system. The Federal Tort Claims Act, which is what is at issue here, does not have many of those that are most controversial so it was wrong for my colleagues to state that there would be jury trials.

Mr. Speaker, it is incorrect to suggest, as a previous speaker did, that this would come out of the Department of Defense budget.

Relatively small amounts come out of the Department of Defense budget, but under the Federal Tort Claims Act larger judgments have \$2,500 come out of the claims fund that is through the Department of Justice. So this would not be true.

The total that the Congressional Budget Office estimated of \$25 million virtually none of that would come out of the Department of Justice.

It is also a mistake to suggest as the previous speaker just suggested, that we would be taking away the indemnity for the doctors in the military. We simply do not do that. This does not change the indemnity as to doctors in the military. It allows a member of the military to sue the Federal Government without a jury trial, without a possibility of punitive damages, but only for physical injury and resultant problems of a physical injury, and the funds if there is a settlement above \$2,500 would not come out of the Department of Defense budget.

Mr. Speaker, I just want to point out to the Members who are reacting to this in terms of their general view on tort law should understand that this is a much more limited right than one generally has in tort law.

Mr. SKELTON. Mr. Speaker, will the gentleman yield?

Mr. FRANK. Mr. Speaker, I would be glad to yield to the gentleman from Missouri, a distinguished lawyer and member of the Committee on Armed Services.

Mr. SKELTON. Mr. Speaker, I thank the gentleman for yielding me this time. I would like to point out that I do support this measure. This sort of law should have been passed some time ago. It is one that is limited in scope, it is one that will give the opportunity for adequate compensation in the correct tribunal and I am sure that there are those that have a proper tort claim whether it be personal injury or otherwise who will be compensated under this, whereas otherwise they would not be so compensated.

I think it is absolutely the right thing to do. I commend the gentleman from Massachusetts [Mr. FRANK], he is on the right path. I compliment not only him but I compliment the Committee on the Judiciary on putting this out, and I wholeheartedly endorse this proposal.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. FRANK. Mr. Speaker, I am happy to yield to the gentleman from Texas.

Mr. GONZALEZ. Mr. Speaker, I thank the gentleman from Massachusetts [Mr. FRANK] for yielding me this time. The gentleman from Massachusetts is the author of this legislation and is the expert. Let me say that some years ago I authored a bill in order to place the service physicians, service doctors on the same footing as the HEW doctors, Veterans' Administration hospital doctors, whereby in a suit for malpractice they would have on a personal basis where the suit was directed to them individually, and where they would be individually responsible, and with them having very limited means of legal advice, we approved the legislation that would put them on the same footing with HEW doctors. To the surprise of the Committee on Armed Services' chairman, he did not realize that that did not exist.

We finally had it signed into law and it provided that resource to the service doctors and medics.

Does this bill in any way affect that?

Mr. FRANK. Mr. Speaker, I thank the gentleman from Texas [Mr. GONZALEZ] for asking this question. The answer is that it does not. It leaves the individual doctors exactly as they were. There is no need for malpractice insurance, there is no need for them to be indemnified. They are not individually sued.